

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

**PLAINTIFF'S REPLY TO ANSWER AND COUNTERCLAIMS
OF DEFENDANT ARCHER DANIELS MIDLAND COMPANY**

Plaintiff Solae, LLC (“Solae” or “Plaintiff”), by and through its attorneys, replies to Defendant, Archer Daniels Midland Company’s, Answer and Counterclaims to Plaintiff’s Second Supplemental Complaint (“ADM’s Answer”), as follows:

1. Paragraphs 1-42 of ADM's Answer are responses to the allegations in Solae's Second Supplemental Complaint to which no response is necessary or appropriate.

ADM's Affirmative Defenses

Invalidity

2. Solae denies the allegations contained in paragraph 43 of ADM's Answer.
3. Solae denies the allegations contained in paragraph 44 of ADM's Answer.
4. Solae denies the allegations contained in paragraph 45 of ADM's Answer.

Non-Infringement

5. Solae denies the allegations contained in paragraph 46 of ADM's Answer.
6. Solae denies the allegations contained in paragraph 47 of ADM's Answer.
7. Solae denies the allegations contained in paragraph 48 of ADM's Answer.

Counter-Claim

Declaratory Judgment

8. Solae admits the allegations contained in paragraph 49 of ADM's Answer.
9. Solae does not have sufficient information to admit or deny the allegations contained in paragraph 50 of ADM's Answer.
10. Solae admits that paragraph 51 of ADM's Answer purports to state a counterclaim for a declaratory judgment of invalidity, unenforceability and non-infringement of U.S. Patent No. 6,642,212 ("the '212 patent"); U.S. Patent No. 6,664,382 ("the '382 patent"); and U.S. Patent No. 6,680,381 ("the '381 patent") under the patent laws of the United States, Title 35 United States Code.

11. Solae admits the allegations contained in paragraph 52 of ADM's Answer.
12. Solae admits the allegations contained in paragraph 53 of ADM's Answer.
13. Solae admits the allegations contained in paragraph 54 of ADM's Answer.
14. Solae admits the allegations contained in paragraph 55 of ADM's Answer.

COUNT I - Invalidity of the '212 patent

15. Paragraph 56 of ADM's Answer realleges the allegations contained in paragraphs 49-55 of ADM's Answer. In response, Solae realleges and incorporates by reference its responses to paragraphs 49-55 in ADM's Answer, as set forth in paragraphs 8-14 above.

16. Solae denies the allegations contained in paragraph 57 of ADM's Answer.

COUNT II - Invalidity of the '382 patent

17. Paragraph 58 of ADM's Answer realleges the allegations contained in paragraphs 49-55 and 57 of ADM's Answer. In response, Solae realleges and incorporates by reference its responses to paragraphs 49-55 and 57 in ADM's Answer, as set forth in paragraphs 8-14 and 16 above.

18. Solae denies the allegations contained in paragraph 59 of ADM's Answer.

COUNT III - Invalidity of the '381 patent

19. Paragraph 60 of ADM's Answer realleges the allegations contained in paragraphs 49-55, 57 and 59 of ADM's Answer. In response, Solae realleges and incorporates by reference its responses to paragraphs 49-55, 57 and 59 in ADM's Answer, as set forth in paragraphs 8-14, 16 and 18 above.

20. Solae denies the allegations contained in paragraph 61 of ADM's Answer.

COUNT IV - Non-Infringement of the '212 patent

21. Paragraph 62 of ADM's Answer realleges the allegations contained in paragraphs 49-55, 57, 59 and 61 of ADM's Answer. In response, Solae realleges and incorporates by reference its responses to paragraphs 49-55, 57, 59 and 61 in ADM's Answer, as set forth in paragraphs 8-14, 16, 18 and 20 above.

22. Solae denies the allegations contained in paragraph 63 of ADM's Answer.

COUNT V - Non-Infringement of the '382 patent

23. Paragraph 64 of ADM's Answer realleges the allegations contained in paragraphs 49-55, 57, 59, 61 and 63 of ADM's Answer. In response, Solae realleges and incorporates by reference its responses to paragraphs 49-55, 57, 59, 61 and 63 in ADM's Answer, as set forth in paragraphs 8-14, 16, 18, 20 and 22 above.

24. Solae denies the allegations contained in paragraph 65 of ADM's Answer.

COUNT IV [sic] - Non-Infringement of the '381 patent

25. Paragraph 66 of ADM's Answer realleges the allegations contained in paragraphs 49-55, 57, 59, 61, 63 and 65 of ADM's Answer. In response, Solae realleges and incorporates by reference its responses to paragraphs 49-55, 57, 59, 61, 63 and 65 in ADM's Answer, as set forth in paragraphs 8-14, 16, 18, 20, 22 and 24 above.

26. Solae denies the allegations contained in paragraph 67 of ADM's Answer.

WHEREFORE, Plaintiff Solae requests judgment dismissing Defendant ADM's counterclaims in all respects, and for such other and further relief as the Court deems just and proper.

DEMAND FOR A JURY TRIAL

Plaintiff hereby demands trial by jury of all issues so triable in this action.

Respectfully Submitted,

LEWIS, RICE & FINGERSH, L.C.

Dated: April 21, 2004

By: /s/ C. David Goerisch

Andrew Rothschild, #4214

C. David Goerisch, #77207

Michael J. Hickey, #101931

500 North Broadway, Suite 2000

St. Louis, Missouri 63102

(314) 444-7600 – Telephone

(314) 241-6056 – Facsimile

E-mail: arothschild@lewisrice.com

dgoerisch@lewisrice.com

mhickey@lewisrice.com

Patricia A. Carson
Thomas F. Fleming
KAYE SCHOLER LLP
425 Park Avenue
New York, NY 10022
Telephone: (212) 836-8000
Facsimile: (212) 836-8689
E-mail: pcarson@kayescholer.com
tfleming@kayescholer.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 21st day of April, 2004, a true and accurate copy of the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon the following persons:

Stephen H. Rovak
Michael T. Marrah
Kirill Y. Abramov
Sonnenschein, Nath & Rosenthal LLP
One Metropolitan Square, Suite 3000
St. Louis, MO 63102

David K.S. Cornwell
Timothy J. Shea, Jr.
Donald R. Banowitz
Sterne, Kessler, Goldstein & Fox, P.L.L.C.
1100 New York Avenue, N.W.
Washington, DC 20005

/s/ C. David Goerisch